



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET - SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

DOCKET NO.: CWA-08-2004-0012

IN THE MATTER OF:

**DAN'S OIL AND SERVICE, INC.**

413 Main Avenue West

West Fargo, North Dakota

and

County Road 17

Horace, North Dakota

Respondent

**FINAL ORDER**

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

April 13, 2004

DATE

SIGNED

Alfred C. Smith

Regional Judicial Officer



Printed on Recycled Paper

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

IN THE MATTER OF	)	Docket No. CWA-08-2004-0012
	)	
Dan's Oil and Service, Inc.	)	
413 Main Avenue West	)	<b>CONSENT AGREEMENT</b>
West Fargo, North Dakota	)	
and	)	
County Road 17	)	
Horace, North Dakota	)	
	)	
Respondent.	)	

Complainant, United States Environmental Protection Agency Region 8 (EPA), and Respondent, Dan's Oil and Service, Inc., hereby consent and agree as follows.

1. On, November 18, 2003, Complainant issued to Respondent an Administrative Complaint alleging certain violations of section 311(j) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §1321(j), as amended by the Oil Pollution Act of 1990.

2. This Consent Agreement shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, successors and assigns, including, but not limited to, subsequent purchasers.

3. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives right to a hearing, any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consent to the terms of this Consent Agreement.

4. Respondent, by executing this Consent Agreement, hereby certifies to EPA that they are now in compliance with each of the relevant provisions of section 311(j) of the Act, 33 U.S.C. §1321(j).

5. Respondent consents to the payment of a civil penalty in the amount of twenty one thousand thirty four dollars (\$21,034.00).

6. Respondent agrees and consents to the following:

a. After Respondent has received the Final Order in this matter, Respondent shall pay a civil penalty of twenty one thousand thirty four dollars (\$21,034.00) in three payments in accordance with the following schedule:

1<sup>st</sup> payment of \$7,012.00 is due and must be received by not later than 05/10/04;

2<sup>nd</sup> payment of \$7,011.00 is due and must be received by not later than 08/10/04;

3<sup>rd</sup> payment of \$7,011.00 is due and must be received by not later than 11/10/04;

by sending certified or cashier's checks, **payable to "Oil Spill Liability Trust Fund,"** with the docket number and Respondent's name written on the check, to:

Jane Nakad (8ENF-T)  
Technical Enforcement Program (8ENF-T)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

The checks shall reference the name and address of Respondent's facility and the EPA docket number of this action.

- b. **Copies of the cashier's or certified checks** shall be sent simultaneously to:

Tina Artemis  
Regional Hearing Clerk (8RC)  
U. S. EPA, Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

and Brenda L. Morris (8ENF-L)  
Legal Enforcement Program  
U. S. EPA, Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

7. Respondent further agrees and consents that if Respondent fails to make any of the installment payments on the due date specified Respondent shall:

- a. Pay interest of six percent (6%) per annum on any amounts specified in subparagraph 6.a., above, which will begin to accrue from the specified due date;
- b. Pay a handling charge of fifteen dollars (\$15.00) that will be assessed on the 31<sup>st</sup> day and each 30-day period that any amounts specified in subparagraph 6.a., above, are due and unpaid; and
- c. Pay an additional penalty of six percent (6%) per annum that will be assessed on any amounts due and unpaid if payment is not received within 90 days of the due date.

8. All late payments received by Respondent will be applied first to the charges specified in subparagraphs 7. a.- c., above, and next to any unpaid principal amount.

9. Should Respondent fail to make a timely payment in accordance with the installment schedule referenced above, EPA maintains and reserves sole discretion to require Respondent to pay immediately upon notification to Respondent the full amount of the civil penalty (\$21,034.00) or any portion thereof outstanding plus the handling charge, additional penalty, and interest referenced in subparagraph 7. a. - c., above.

10. The penalty specified in Paragraph 5, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

11. This Consent Agreement constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in the Complaint. Nothing in this Consent Agreement is intended to nor shall be construed to operate in any way to resolve any criminal liability, if any. Compliance with this Consent Agreement shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

12. Each undersigned representative of the parties to this Consent Agreement certifies that he/she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

13. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Agreement.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY REGION 8  
Office of Enforcement, Compliance  
and Environmental Justice, Complainant.**

Date: 4/7/04

By: **SIGNED**  
Elisabeth Evans  
Director  
Technical Enforcement Program

Date: 4-6-04

By: **David J. Janik**  
Michael T. Risner, Director  
David Janik, Supervisor  
Legal Enforcement Program

Date: 4/5/01

By: **SIGNED**  
Brenda L. Morris, Attorney  
Legal Enforcement Program

**Dan's Oil and Service, Inc., Respondent.**

Date: 4-5-04

By: **SIGNED**  
  
**Dennis Rheault**  
(Print name of signatory)

## **CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **DAN'S OIL and SERVICE, INC.**, **DOCKET NO.: CWA-08-2004-0012** was filed with the Regional Hearing Clerk on April 13, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on April 13, 2004, to:

Dennis Rheault  
Dan's Oil and Service, Inc.  
413 Main Avenue West  
West Fargo, North Dakota 58078

and

Commander  
Finance Center (OGR)  
U.S. Coast Guard  
1430 A Kristina Way  
Chesapeake, VA 23326

April 13, 2004

**SIGNED**\_\_\_\_\_

Tina Artemis  
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE  
ON APRIL 13, 2004.**